

Committee on Resources Subcommittee on Forests & Forest Health

Testimony of Michael D. Scott, Program Director, Greater Yellowstone Coalition

Greater Yellowstone Coalition

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**TESTIMONY OF MICHAEL D. SCOTT
REPRESENTING THE GREATER YELLOWSTONE COALITION
ON H.R. 3381, "GALLATIN LAND CONSOLIDATION ACT OF 1998",
BEFORE THE HOUSE COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH
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Madame Chairman, members of the Subcommittee, my name is Michael Scott. I am the Program Director for the Greater Yellowstone Coalition. The Greater Yellowstone Coalition is a fifteen year old regional conservation organization dedicated to the conservation and protection of the Greater Yellowstone Ecosystem and the unique quality of life it sustains. We have over 8,000 individual members, 120 member organizations and over 115 member businesses.

I am also testifying on behalf of American Wildlands, Montana Chapter of the Sierra Club, The Wilderness Society and Gallatin Wildlife Association, an affiliate of the Montana Wildlife Federation.

I am pleased to be here to support H.R. 3381, "The Gallatin Land Consolidation Act of 1998". This legislation is critically needed. It rectifies a century-old checkerboard lands problem created by the railroad land grants of the late 1800s. My testimony will cover several topics; 1) background on H.R. 3381 and its preceding 1993 legislation; 2) the values associated with the lands acquired by H.R. 3381; 3) the methods used to accomplish the exchange; 4) important additional components of H.R. 3381, and; 5) the option offered by Big Sky Lumber, its relationship to H.R. 3381 and changes necessary to it.

Before I proceed, I would like to thank Representative Hill and Senators Baucus and Burns for their hard work on this legislation and for their bipartisan cosponsorship of identical House and Senate bills. If we are to pass this much-needed legislation this Congress, it will take the combined effort of our entire delegation.

We are very grateful for their continued support.

In addition, we would like to thank Big Sky Lumber Company (BSL) and its owners, Tim Blixseth and Mel McDougal for their willingness to offer their lands for exchange. Without their understanding of the tremendous public value their lands contain and their public spirit in offering us the opportunity to acquire them, we would not be here today.

BACKGROUND ON H.R. 3381 AND P.L 103-91

Each generation makes a contribution toward the protection of Yellowstone National Park and its surrounding ecosystem. Over this century, the state of Montana has purchased important wildlife lands in the upper Gallatin River valley. Presidents have signed executive orders setting aside portions of the Gallatin National Forest for migrating wildlife. Just ten years ago, in the wake of the fires in Yellowstone, Congress appropriated almost \$10 million to acquire important winter range for Yellowstone's elk in the upper Yellowstone River valley.

Passage of H.R. 3381 will be this generation's contribution to Yellowstone and the Greater Yellowstone Ecosystem. It will help keep intact elk migration corridors, blue ribbon trout streams, a hunting and fishing heritage based on extensive wild land habitat and critically important watersheds that nourish growing communities and extensive agricultural operations.

Without H.R. 3381, the lands BSL owns in the Taylor Fork, Gallatin Range and Bridger Range will be sold and subdivided. Subdivisions make poor wildlife habitat and offer little in the way of recreational opportunity. Nor do they support those Montanans who make their living from the land.

County taxpayers will also benefit from this exchange. A recent study done by the Greater Yellowstone Coalition in conjunction with the Local Government Center at Montana State University examined the cost of services being provided to different land uses in Gallatin County. We found that rural subdivisions required \$1.45 in services for every dollar of tax revenue collected.

While the land grants given to the railroads helped build the transcontinental rail lines, they also spawned a set of land ownership problems that continue to this day which H.R. 3381 addresses.

On the Gallatin National Forest, the railroads owned every other section of land from Yellowstone National Park's northwest corner to Bozeman, Montana - a distance of almost fifty miles. These private sections, now owned by BSL, include the tops of mountains, stream bottoms, elk migration corridors, moose winter range, critical grizzly bear habitat and blue ribbon fisheries.

The land is used extensively by recreationists, hunters and fishermen. It also helps support a thriving outfitting business. Fully one-third of all the outfitters in Montana operate on the Gallatin National Forest and hunters harvest about one-quarter of all Montana's elk on this forest. Horsemen, hikers, ATV users, skiers and snowmobilers from around the nation recreate on this forest.

Consolidating the checkerboard of the Gallatin and Madison Ranges is probably the most important action we can take to protect the ecological integrity of the northwest corner of the Greater Yellowstone Ecosystem. Scientists agree. Dr. Reed Noss, a leading conservation biologist, says that "The exchange will clearly result in less habitat fragmentation [and] sensitive species should benefit from the exchange".

H.R. 3381 represents the second phase of legislation originally passed in 1993 (P.L. 103-91) entitled "The Gallatin Range Consolidation and Protection Act". The 1993 legislation contained two sets of paired exchanges.

The first set, which consolidated land ownership in the main Gallatin Range and in the Porcupine Creek drainage has already occurred. That action acquired about 40,000 acres of BSL land in exchange for about 16,000 acres of national forest land on three Montana forests.

Acquired in the exchange were roadless lands in the Hyalite-Porcupine-Buffalo Horn Wilderness Study Area, as well as the purchase of critical elk winter range in the Porcupine Creek drainage. In exchange, BSL acquired desirable timber lands on the Gallatin, Lolo and Flathead National Forests.

The 1993 legislation directed the Forest Service to work with BSL to develop a second set of exchanges, which are the subject of the legislation before you today. H.R. 3381 acquires crucial BSL lands in the Taylor Fork drainage in the Madison Range, the remaining BSL lands in the Gallatin Range, and parcels in the Bridger and Bangtail Ranges.

VALUES OF LANDS ACQUIRED BY H.R. 3381

1. Taylor Fork

The Taylor Fork is some of the best wildlife habitat outside of Yellowstone National Park. It provides for one of the largest moose populations in Montana, as well as hosting a large portion of the Gallatin elk herd which numbers in the thousands. This herd, some of which is resident, but most of which migrates out of Yellowstone National Park travels through the Taylor Fork on its way to state game ranges on the west slopes of the Madison Range. In spring, the Taylor Fork provides excellent elk calving areas.

The Taylor Fork also has the highest density of grizzly bears outside of the Park. Almost a dozen bears call the drainage home. The Taylor Fork plays an extremely important role in the recovery of this magnificent animal in the Greater Yellowstone Ecosystem.

The Taylor Fork has one of the few remnant populations of Yellowstone Cutthroat Trout outside of the Park. Once widely distributed in Montana, the Yellowstone Cutthroat is now limited to streams that are remote and not accessible to other species.

2. Remainder of the Gallatin Range

The lands to be acquired from BSL in the remainder of the Gallatin Range are found principally in the Squaw and Swan Creek drainages. These drainages provide habitat for a wide array of species, including elk, deer, black bear and the occasional grizzly bear.

According to the Montana Department of Fish, Wildlife and Parks, once these drainages are restored, they will be some of the best wildlife habitat in southwest Montana.

The drainages are extremely popular recreational areas. They are used by off road vehicle enthusiasts, mountain bikers, hikers and hunters and fishermen. The two drainages also contain several Forest Service campgrounds.

H.R. 3381 provides for the acquisition of two of the remaining private sections in the Hyalite-Porcupine-

Buffalo Horn Wilderness Study Area in the northeast corner of the Gallatin Range along the West Pine area. These are two important sections as they currently block legal access to sportsmen seeking to get to this portion of the Gallatin Range.

3. Bridger Range

In the Bridger Range, H.R. 3381 would reacquire some six sections just south of Flathead Pass. These sections, which were traded to BSL in the 1993 legislation, are important additions to H.R. 3381. Reacquiring them fulfills a promise made to the public in 1993. While BSL logged much of this land, local landowners, sportsmen and conservationists all agree that reacquiring these parcels is an important step to protecting water supplies for adjacent ranchers and providing for the habitat needs of mule deer and elk.

Also acquired are lands in the Pine/Slushman area. These parcels are important mountain goat habitat as well as habitat for elk and deer.

4. Bangtail Range

Perhaps the most controversial part of H.R. 3381 involves the consolidation of lands in the Bangtail mountains. The Bangtails are currently in a checkerboard land ownership pattern. H.R. 3381 would divide the ownership of the range, making the east half public and the west half private. Later in this testimony, under our suggested changes to the option, we offer ways of mitigating the impacts of the exchange in the Bangtails to local landowners. However, it is important to note, the public ownership of the east half of the Bangtails brings substantial public benefits. Several of the streams that flow off this portion of the Bangtails contain pure strains of Yellowstone Cutthroat Trout, a "species of special concern" in Montana due to its limited distribution.

Public ownership of the east half of the Bangtails also provides for spring, summer and fall range for elk and mule deer immediately adjacent to winter ranges.

METHODS USED TO ACQUIRE LANDS IN H.R. 3381

H.R. 3381 is more complicated than its 1993 predecessor legislation. P.L. 103-91 was a relatively simple land-for-land exchange. H.R. 3381 uses three methods for acquiring BSL lands.

Before reviewing the details on acquisition, it is important to note that final appraisals have not yet been completed on either BSL lands or Forest Service lands. Therefore, the mix of land, timber and cash in the exchange may change.

A. Land-for-land

Section 4(a) authorizes the Forest Service to acquire approximately 55,000 acres of BSL lands described above in exchange for approximately 28,000 acres of Forest Service land on the Gallatin National Forest and four other Montana forests, as well as 3,000 acres of BLM land in Montana.

While we support this Section, it is a component of the exchange that has provoked some of the most heated controversy because of the impacts to landowners living adjacent to the Bangtail mountains. Many of the initial concerns raised by local landowners have since been mitigated, but one major one remains. This centers around the need to define appropriate timber harvest guidelines on national forest lands acquired by

BSL in the Bangtails. We have made specific recommendations in this regard in the Option section of our testimony.

B. Timber-for-land

The unique arrangement in Section 4(c) would allow the Forest Service to divert timber sales it prepares to BSL once all necessary environmental reviews have been completed. Section 4(b) also provides for appeal and litigation of timber sales, but provides a cutoff date for litigation to be filed (Section 4(c)(3)).

Greater Yellowstone Coalition supports this Section as long as full citizen rights are maintained. We commend the delegation for devising language that maintains citizen oversight, yet provides the company the certainty it needs to secure timber rights. We, along with other conservation and sportsmen organizations, have recently sent a letter to the Gallatin National Forest pledging to work with the Forest Service to identify the least controversial timber sales we can find in order to better implement this section.

Section 4(c) represents a carefully crafted compromise. Initially, some argued that the only way to provide BSL with the certainty it needed that the company would receive timber was to include so-called "sufficiency" language. However, many people in the community objected to "sufficiency" language based on experiences under the Salvage Rider.

The delegation sought a compromise which is embodied in this section. The compromise maintains citizen rights, but provides two backups. First, Section 4(c)(3) provides an endpoint to litigation efforts. This means once any appeal and/or litigation has been resolved and timber is conveyed to BSL, no litigation can be filed.

Second, Section 4(c)(6) provides for substitution timber from within the BSL market area. This means that if the Gallatin National Forest cannot prepare the 20 mmbf of timber referenced in Section 4(a)(3) within the defined time frames, the Forest Service will provide substitute timber from other national forests within the BSL market area.

These two provisions assure BSL that the timber component of this exchange will be accomplished.

However, one aspect of Section 4 should be clarified. Section 4(c)(2)(A) defines how timber sales may be appealed or litigated. According to the agreement reached between all interested parties, the intent of Section 4(c)(2)(A) is to provide a 45-day window after the Forest Service issues a decision notice for a timber sale and a 45-day window after final resolution of an appeal.

The section must be clarified by adding the following:

(A) IN GENERAL, --The Secretary shall grant timber harvest rights to BSL not earlier than the date that is 45 days after the date on which the Secretary issues a decision notice to grant the timber harvest rights, or, if such a decision notices is appealed, 45 days after the date of final resolution of the appeal and any related litigation.

Finally, it is important to note that BSL may reserve additional private timber from the 55,000 acres of lands it will convey to the United States in order to help balance the exchange. How much timber is reserved and its location will not be known until the final appraisal is completed.

C. Cash-for-land

Section 4(a)(4)(A) provides that up to \$6.5 million may be spent to acquire portions of the Taylor Fork.

We strongly support the use of cash as part of this exchange. Cash is the easiest and cleanest way to acquire land. Cash purchase has none of the environmental or political drawbacks of land-for-land or timber-for-land. The concerns raised by homeowners in the Bangtails or potential concerns over public timber sales are alleviated under cash acquisition.

We suggest that this section be modified by removing the specific reference to a dollar amount. We should give to the Forest Service the flexibility to use cash in whatever reasonable amount necessary to balance off the other two components of the exchange.

IMPORTANT ADDITIONAL COMPONENTS OF H.R. 3381

Two sections of H.R. 3381 are especially noteworthy of support.

Section 5(e) directs the Forest Service to develop and implement a watershed restoration program to bring acquired BSL land and surrounding national forest land into compliance with Forest Service standards and guidelines.

This provision is especially needed in places like Swan and Squaw Creeks where checkerboard land ownerships have led to overlapping road systems and uncoordinated timber harvest. The result of parallel public and private land management practices are watersheds that do not meet forest plan standards and guidelines and impair the tremendous wildlife and watershed potential of these two drainages.

Section 5(e) directs the Forest Service to move quickly to resolve this problem. It also provides that state and local conservation corps can be used to help restore watersheds, something that will assure that problems in these areas are rectified soon.

Section 5(d) directs the Forest Service to initiate a public process to amend the Gallatin and Deerlodge Forest Plans to integrate acquired BSL lands into the plans. This is an important section in that it gives the public an immediate opportunity to participate in deciding future management of acquired lands.

The public has expressed great support in acquiring BSL lands. This section provides the public with the immediate opportunity to participate in their future management.

THE OPTION OFFERED BY BSL, ITS RELATIONSHIP TO H.R. 3381 AND NECESSARY CHANGES TO THE OPTION

Much of H.R. 3381 is premised on the development and implementation of an option with BSL. While H.R. 3381 sets the broad outlines of the exchange and contains the authorities for using timber and cash in the acquisition of BSL land, it is the option that contains the details on how the exchanges will be implemented and how BSL and the Forest Service will be obligated to perform their respective duties.

Thus, one cannot read H.R. 3381 without also reading and agreeing to the option which will accompany it. And, while it is unusual for Congress to review the details of option agreements, in this case it is necessary for this committee to insist that certain provisions be contained in any option agreement.

Unfortunately, the current option being offered to the United States by BSL does not reasonably balance the equities between the company and the public. In large measure, BSL is guaranteed by legislation and terms in the option that it get what it wants: 1) a block of consolidated ownership south of Big Sky; 2) a block of consolidated ownership in the Bangtails; 3) timber volume, and; 4) cash.

However, the public is not guaranteed that it gets what it wants, namely the Taylor Fork. The option gives too many opportunities for BSL to exercise unilateral discretion and withhold portions of the Taylor Fork. This is an unacceptable situation that must be changed.

Additionally, two outstanding issues remain to be resolved in the portion of the option relating to the Bangtail Mountains which are discussed below. The first relates to the need to adopt timber standards for national forest land traded to BSL. The second concerns the need to identify alternative trade assets for three Bangtail sections,

We understand that the option drafted by BSL and offered to the United States is merely an offer, which is why the Option Agreement in Section 3(5) is left blank. But because the option crafted by BSL is the only document currently available for review we will address our comments concerning the Taylor Fork, and other provisions, toward that document. Our suggested changes are indexed by page to the BSL offered option dated February 16, 1998

A. Option Changes

Page 4

Item (4) should have a period after "Exchange Agreement" with the rest of the sentence deleted. The Exchange Agreement is the agreement described in the legislation as the vehicle for defining exchange terms and conditions. It may or may not contain the same provisions as the Option. One should not be tied to the other.

Page 5

The Irrevocable Option needs two additions. First, the two sections in West Pine within the Wilderness Study Area need to be added as an area covered by the option. Second, a summary of the considerations in the option needs to be included as a second paragraph. Proposed language:

The purpose of this option is to implement an equal value exchange of Exhibit A lands for Exhibit B and C lands subject to cash purchase of Exhibit D lands, sale of Taylor Fork to RMEF and balancing of the exchange as provided hereinafter.

Page 6

Delete (3). The public should be able to use purchase dollars throughout the life of the exchange which runs two full calendar years after passage of legislation.

Revise Acquisition of Taylor Fork Land by RMEF as follows:

Owner acknowledges that the RMEF, or other conservation organizations or entities, may desire to acquire by purchase Owner's land in the Taylor Fork Area. In the event that agreement can be reached relative to the sale acquisition of Owner's land between Owner, RMEF, or other conservation organizations or entities,

appointed or designated by the Forest Service, that land shall be removed from this option.

As currently drafted, this section would leave it to the discretion of BSL to determine who was a qualified conservation organization or entity. It is more appropriate for the Forest Service to make that determination.

Page 7

Revise the second sentence of Timber on Owner's Lands as follows:

Owner may revise the timber volume information on the Owner's lands during the period of this Option and appraised value shall be adjusted accordingly.

The option contemplates that, during its term, BSL would continue to be able to harvest timber on its lands. The proposed addition assures the public that if such harvest occurs, values on BSL land will be adjusted accordingly.

Page 9

Revise the second paragraph of Alternatives to Maintain Balance in an Exchange as follows:

In the event one or more federal assets identified for exchange are removed from further consideration, Owner agrees that the value of such assets shall be replaced through the use of one or more of the following alternatives, each to be exhausted in the order listed before proceeding to the next.

Revise (1) as follows:

Owner agrees to accept Payment of direct purchase funds...

Revise (2) as follows:

Owner may sell Sale of land ...

Revise (3) as follows:

Owner may accept certain Substitution of additional parcels...

Revise (4) as follows:

Owner may reserve some Reservation of timber volume...

Delete (5).

The purpose of this section is to provide alternative methods to acquire BSL lands if any public assets slated for the exchange drop out. This section sets forth other public assets that can be used to balance BSL assets.

Our proposed changes would assure that both BSL and the Forest Service thoroughly explore and implement each asset before proceeding to the next. Further, we remove paragraph (5) which would allow BSL to withhold sections in the Taylor Fork to balance the exchange. We will not support provisions that allow BSL to remove from the exchange the public's priority lands for acquisition.

Page 14

Delete the following paragraph:

Notwithstanding the above, Owner shall have the right to request the re-zoning of any of its lands described in Exhibit A.

There is no need for BSL to rezone any of the lands it proposes to exchange to the United States. This provision could complicate valuation of BSL lands while legislation is proceeding and the option is in effect. It should be dropped.

Page 16

Delete (3)(B)

Paragraph (3)(B) allows BSL to accept or reject any timber harvest that the Forest Service proposes to convey to the company under Section 4(a)(3) of H.R. 3381. While we recognize that BSL needs to ensure the economics of any particular sale, it should be noted that the option contains a list of Forest Service sales already approved by BSL. This paragraph is not needed given the company's pre-approval of sales.

In the alternative if the paragraph is kept, it should be modified to limit the company's discretion to reject sales to issues concerning profitability. But, this discretion should be measured against what other timber companies might do in similar circumstances. Page 16

Delete the second sentence in (3)(C). Change the third sentence in (3)(C) as follows: The Forest Service shall attempt to substitute, with the agreement options:

(1) Substitute equivalent timber harvest rights volume from the same market area;

(2) Additional cash;

(3) Conveying additional National Forest lands containing merchantable timber from the same market area.

This paragraph provides for the Forest Service to provide substitute timber volume to BSL in the event extraordinary circumstances prevent the Forest Service from producing 20 mmbf of volume from the Gallatin National Forest.

We recommend deleting the second sentence in (3)(C) since the Owner's discretion is already protected in (3)(B). We also recommend giving the Forest Service a direct mandate to substitute timber or other assets in the third sentence.

To be consistent with the legislation authorizing the use of cash we suggest the addition of cash as a substitute option. Finally, we recommend changing (3) to be consistent with Section 4(c)(6) of H.R. 3381, which authorizes substitution "from the same market area".

Page 17

Delete the paragraph immediately above (4) Rights-of-Way that begins "In the event.."

This paragraph states that, if the Forest Service does not produce 20 mmbf of timber, the public will forfeit its rights to the Taylor Fork. Not only is this an unacceptable provision, it is inconsistent with paragraph (3)(C) on page 16 which specifically provides for substitution of other timber or land and inconsistent with page 9 which provides alternatives for maintaining balance in the exchange.

Neither the option, or the legislation, can allow for Taylor Fork lands to be withheld from the public. There are numerous public assets, including timber, land and cash which can be used to balance this exchange without the threat of losing the Taylor Fork.

Page 19

Page 19 deals with mitigation measures proposed by BSL to reduce impacts on the Battle Ridge and Bangtail Mountain areas. There are three outstanding provisions requested by the Bridger Canyon Property Owners Association (BCPOA) that are not currently covered in the option.

First, BCPOA proposed, and we support, that timber harvest standards be adopted by BSL for the national forest lands the company receives in the Bangtail Mountains. Much of the private land in the Bangtails has been extensively harvested in the past, so much so that neither the Forest Service or state of Montana can currently cut timber in the area because it does not meet federal or state land standards.

A set of timber standards that fall someplace between the current Montana discretionary Best Management Practices and Forest Service standards and guidelines should be adopted as part of this option. We urge the committee to request of BSL and the BCPOA that such standards be developed and included in the option before legislation is passed.

Second, three sections of national forest land in the Bangtails currently slated for trade to BSL should be retained by the public and alternative assets found. Section 24 in the north end of the Bangtails provides an important recreation and wildlife corridor from the Bangtails to the main Bridger Range. As currently configured, the swap would cut off this corridor because section 24 and its adjoining section meet, thus precluding public access across the them. In the alternative to acquisition of Section 24, a trail easement should be granted across the section or the adjoining Section 26.

Sections 28 and 32 in the southern portion of the Bangtails are two of the best remaining elk wintering areas left in the Bangtails. By retaining these lands, sportsmen are assured that the elk herd in the area will continue to thrive.

We understand that BSL and the Forest Service have started to explore alternatives to these three sections. We encourage the subcommittee to make sure these discussions bear fruit and that before legislation passes potential alternatives are identified.

Finally, before legislation passes the existing trail system in the Bangtails should be located and agreement reached between BSL, the Forest Service and BCPOA.

SUMMARY

H.R. 3381 is important legislation that the Greater Yellowstone Coalition supports. It consolidates private checkerboard lands that have extremely high public value for wildlife and recreation. These lands also support a thriving local economy. With the minor changes suggested to the legislation and the needed

changes to the option offer by BSL that will assure acquisition of Taylor Fork as well as meet the needs of local property owners, H.R. 3381 will be an outstanding bill.

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